

O. TRANSFER OF DEVELOPMENT RIGHTS**1. Purpose**

The purpose of the Transfer of Development Right (TDR) By-law is to provide an alternative for the preservation of Developable Farm and/or Developable Open Space Parcels; while encouraging economic development through an increase in the development potential within designated parcels. Through a TDR special permit a Developable Farm and/or Developable Open Space Parcel can sell its potential Development Rights to a Receiving Parcel; thereby allowing the Receiving Parcel to meet its companies' growth demands. The objective of the TDR is twofold: to serve as an economic development tool while promoting the preservation of Developable Farm and/or Developable Open Space parcel in exchange. The intent of the TDR special permit is consistent with the goals and objectives of the Town's Master Land Use Plan and Open Space & Recreation Plan.

2. Applicability**a. The Giving Parcel**

1. The Planning Board shall determine the allowable Development Rights that may be transferred to a Receiving Parcel. To determine the total Development Rights allowed to be transferred, the owner of the Giving Parcel shall prepare a Transfer of Development Rights Yield Plan (TDR Yield Plan).
2. The owner of the Giving Parcel shall submit the TDR Yield Plan and an application to the Planning Board for review. The Planning Board may retain a Peer Review Consultant at the expense of the owner of the Giving Parcel to ensure the TDR Yield Plan represents a true and accurate representation of the Giving Parcel.
3. The TDR Yield Plan will be reviewed during a posted public hearing; notice of the public hearing shall be made in accordance with G.L. c. 40A, §11.
4. The total allowable Development Rights that the Giving Parcel is eligible to transfer shall be the total square footage of the residential building allowed as denoted in the Transfer of Development Rights Residential Building Size Chart within the specific zoning district that the Giving Parcel is located in. The size of the residential building as denoted in the Transfer of Development Rights Residential Building Size Chart shall be multiplied by the total number of building lots allowed by-right to determine the total area to be transferred to a Receiving Parcel and placed under an APR and/or CR.

Transfer of Development Rights Residential Building Size Chart

Giving Parcel Zoning District	Residential Building Size
Single Family Residential (R-4)	6,500 square feet
Single Family Residential (R-3)	6,000 square feet
Single Family Residential (R-2)	5,500 square feet
Single Family Residential (R-1)	5,000 square feet
General Residential (G)	4,500 square feet

5. The APR and/or CR placed on the Giving Parcel shall be as follows:
 - For Giving Parcels transferring all Development Rights: At the expense of the owner of the Giving Parcel, the entire Developable Farm and/or Developable Open Space Parcel shall be placed under an APR and/or CR in perpetuity. The entire Giving Parcel shall include all areas identified as non-buildable areas which include wetlands, wetland buffers, and Moderate Slopes, in addition to the buildable lots as identified in the TDR Yield Plan.
 - For Giving Parcels transferring a portion of Development Rights: At the expense of the owner of the Giving Parcel the portion of the Developable Farm and/or

Developable Open Space Parcel associated with the square footage to be transferred shall be placed under an APR and/or CR. This shall include all building lot areas associated with the residential building unit square footage, infrastructure and roadways associated with the building lots, and all non-buildable areas including wetlands, wetland buffers, and Moderate Slopes as identified in the TDR Yield Plan. For fractions of residential building unit square footage, all fractions shall be rounded up to the nearest whole number. The portion of the land to be placed under an APR and/or CR shall be selected with the intent of creating contiguous tracks of land and where possible contiguous with abutting farm land and open space land.

6. All lands deemed non-buildable on the Giving Parcel, such as wetlands, wetland buffers, and Moderate Slopes as identified in the TDR Yield Plan, shall be placed under an APR and/or CR at the same time as the first Development Rights are placed under an APR and/or CR.
Development Rights on a Giving Parcel that have not been transferred to a Receiving Parcel shall remain eligible for future transfer or development.

b. The Receiving Parcel

1. The owner of the Receiving Parcel shall file an application for a TDR special permit with the Planning Board.
2. The owner of the Receiving Parcel shall enter into an agreement with the owner of the Giving Parcel for the transfer of the Development Rights prior to applying for a TDR special permit.
3. The Planning Board Administrator shall ensure that the APR and/or CR has been placed on the Giving Parcel by the Receiving Parcel prior to the issuance of any occupancy and use permit.
4. The owner of the Receiving Parcel may assemble Development Rights from multiple Giving Parcels. The resulting development on a Receiving Parcel shall not exceed the allowable dimensional requirement increases stated herein. Parcels of land that are pre-existing non-conforming lots that exceed allowed densities or that have received variances for building height, number of additional floors, lot coverage, and/or FAR are not eligible to receive transferred Development Rights.
5. The transferred Development Rights from the Giving Parcel may be used in a 1:1 ratio on a Receiving Parcel. Development Rights from the Giving Parcel that are used on a Receiving Parcel may be applied on the Receiving Parcel to increase the following dimensional regulations from those stated in Section IV.E.2. Table of Dimensional Regulations allowed by-right. Allowed increases as permitted in Section IV.E.2. should not create the need for an increase in parking that exceeds the capacity of the Receiving Parcel. If the increase as permitted in Section IV.E.2. requires more additional parking than the site can support, then the Receiving Parcel shall construct structured parking or establish alternative transportation options to the site such as carpool incentives, transportation from local public transportation hubs, etc.

	Maximum Increase in Building Height/Additional Floors	Maximum Increase in Lot Coverage	Maximum Increase in FAR
Receiving Parcel Development Rights Chapter 43D Priority Development Sites	$\frac{4}{35}\%$	15% [§]	$\frac{1.0}{50}\%$

Comment [ALL1]: 05/19/2016 The Planning Board during the May 19, 2016 public hearing voted 4-0-1 to increase the number of floors to allow for an additional 4 floors, with each of the additional floors being no higher than 15' per floor. The Planning Board also increased the Floor Area Ratio (FAR) from 50% to 1.0 at this time

* Additional floors added to a project through the use of TDR, shall be not be more than 15' per additional floor* total height shall not exceed the allowed maximum for all structures, including roof top mechanical equipment or penthouses.

6. In the event of unused Development Rights the owner of the Receiving Parcel may be permitted to sell any unused Development Rights to another Receiving Parcel. The secondary Receiving Parcel shall be required to seek a Special Permit for the Transfer of Development Rights from the Planning Board prior to the use of the purchased Development Rights.

c. Agriculture Preservation Restriction or Conservation Restriction Process

The Giving Parcel must meet the following requirements:

1. Such parcel shall be placed under an APR and/or CR in perpetuity pursuant to state statute Chapter 184 Section 32 to ensure that said parcel will remain as agricultural land or open space. Once an APR and/or CR has been placed on the Giving Parcel no additional buildings can be built on nor can any land be used to yield additional Development Rights in the future, except as per c.2., below;
2. No buildings are allowed within the APR and/or CR area, except for existing buildings that have been constructed prior to the TDR Yield Plan. Farms shall be allowed to construct structures associated with the operations of the farm on up to 5 percent of the APR area. Structures associated with the farm may include: barns, farm store, housing for farm help, etc.;
3. The APR and/or CR may be held by the Town of Framingham, a land trust, or the Commonwealth of Massachusetts. The APR and/or CR is prohibited from being held by the owner of the Giving Parcel or the owner of the Receiving Parcel. The terms of the APR and/or CR shall be reviewed by Town Counsel at the expense of the owner of the Giving Parcel and approved by the Planning Board;
4. Trails systems for public access for passive recreational use may be developed within APR and/or CR-encumbered land of the Giving Parcel(s). ~~The Giving Parcel may develop a trail system within the APR and/or CR lands, which may be accessible for public use;~~
5. Farming rights on any land subject to the APR and/or CR may be sold or leased to another farmer for the purpose of continuing or creating Agricultural and/or Farm use of the land;
6. Developable Open Space may be utilized at a future date for Agriculture and/or Farm uses; and
7. All of the above restrictions shall be made part of and included as additional provisions contained within the APR and CR documentation.

3. Application Review

The review procedure for the TDR special permit application shall be in conformance with M.G.L. ch. 40A, Sections 9 and 11 and Section VI.E., and other permitting and approval processes as may be applicable. The Planning Board may require the Applicant to fund a Peer Review Consultant to assist in the technical review as outlined herein, in accordance with Article 16 of the Planning Board's Administrative Rules and Regulations and M.G.L. ch. 44, Section 53D.

4. Variance Limitation

The Planning Board may issue a TDR special permit in accordance with the additional requirements and standards specified within Section V.O., only if the receiving parcel is not a pre-existing non-conforming property and a variance has not ever been issued from the requirements of this Section V.O for the Receiving Parcel. A pre-existing non-conformity or a variance from the provisions of Section V.O. shall render a property ineligible for the filing of a TDR special permit application and TDR special permit.

Comment [ALL2]: 05/19/2016 The Planning Board voted 4-0-1 at the May 19, 2016 public hearing to accept the changes as presented in the warrant for Section V.O.2.c.4